

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KARL JULIUS JAMES,

Plaintiff,

v.

MICHAEL THURMER,

Defendant.

ORDER

08-cv-568-bbc

In an order dated October 3, 2008, I denied petitioner's request for leave to proceed in forma pauperis in this action because he has struck out under 28 U.S.C. § 1915(g) and the matter he raised in his complaint does not qualify for the imminent danger exception to § 1915(g). When petitioner failed to prepay the \$350 fee by the deadline he was given to do so, I dismissed the case on November 3, 2008. In an order dated March 17, 2009, the Court of Appeals for the Seventh Circuit concluded that plaintiff did not qualify for leave to proceed in forma pauperis under 28 U.S.C. § 1915(g) because he has struck out and ordered him to pay within fourteen days the fee for filing his appeal of this case. After plaintiff failed to pay the filing fee within the deadline established by the court of appeals, an order was entered dismissing plaintiff's appeal and directing him to pay the overdue filing

fees.

Despite these rulings plaintiff continues to argue that he has not struck out under 28 U.S.C. § 1915(g). Plaintiff has filed in this court a motion asking the court to reconsider the October 3, 2008 three-strikes determination. However, as I explained to plaintiff in the November 6, 2008 and November 14, 2008 orders, once he filed a notice of appeal, the Court of Appeals for the Seventh Circuit was the proper place to make this argument. In its March 17, 2009 order, the court of appeals concluded that plaintiff has struck out and placed him on its list of filers with three strikes. Because this court cannot review the three-strikes determination made by the court of appeals, if plaintiff wants to further contest this issue, he should address his concerns to the court of appeals. Accordingly, I will deny plaintiff's motion for reconsideration of the court's October 3, 2008 three-strikes determination.

Also, plaintiff has filed a motion for reconsideration of the court's June 12, 2009 order, in which I denied his motion for a refund of the money paid towards his filing fees. He filed a second motion for a refund on July 1, 2009, which I denied on July 6, 2009. Plaintiff does not raise any issue that changes the analysis contained in those orders. Therefore, I will deny plaintiff's motion for reconsideration of the court's June 12, 2009 order.

ORDER

IT IS ORDERED that:

1. Plaintiff Karl Julius James's motion for reconsideration of the court's October 3, 2008 three-strikes determination, dkt. #35, is DENIED; and
2. Plaintiff's motion for reconsideration of the court's June 12, 2009 order denying his motion for refund of filing fees, dkt. #36, is DENIED.

Entered this 27th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge